IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

THURSDAY, THE 23RD NOVEMBER 2006 / 2ND AGRAHAYANA 1928

Crl.MC.No. 3870 of 2006()

CMP.5919/2006 of JUDL. MAGISTRATE OF FIRST CLASS, KASARAGOD

.....

PETITIONER: ACCUSED

JOHN, AGED 28 YEARS,
S/O.ANTONY RAJA,
UCHAMBALLY AROBALA P.O., OBLI,
KANAKPURA TALUK, BANGALORE DISTRICT,
KARNATAKA STATE.

BY ADV. SRI.T.K.VIPINDAS

RESPONDENTS: COMPLAINANT

THE STATE OF KERALA
REPRESENTED BY PUBLIC PROSECUTOR,
REPRESENTING S.H.O. KUMBLA EXCISE RANGE.

BY PUBLIC PROSECUTOR SRI.PUZHAKKARA MUHAMMED

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON 23/11/2006, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R.BASANT, J

Crl.M.C.No.3870 of 2006

Dated this the 23rd day of November 2006

O R D E R

The petitioner faces allegations under Section 55 (a) of the Kerala Abkari Act. It is alleged that on 20/08/2006 at 11.55 p.m, he was transporting 30 x 414 litres of spirit in a vehicle driven by him. He was intercepted by the excise party and arrested. He continues in custody, notwithstanding the fact that bail has been granted to him by the learned Magistrate as per order dated 03/11/2006. Bail was granted by default as the final report had not been filed within the period stipulated by law. The petitioner is aggrieved by a condition imposed while he was granted bail. It was directed that two sureties must execute bond along with the petitioner for an amount of Rs.1,00,000/-. It was further insisted that the sureties must produce solvency certificates issued by competent revenue officer. The learned Magistrate appears to have taken note of the nature and the huge quantity of the contraband liquor allegedly transported by the petitioner in his vehicle. The learned Magistrate appears to have further noted that the petitioner is not a local person and he hails from another state. The condition imposed cannot, in these circumstances, be held to be perverse or unjustified but I do take note

of the fact that the petitioner, inspite of the order passed, has not been able take advantage of the order and is languishing in prison from 20/08/2006.

2. The learned counsel for the petitioner submits that the petitioner is willing and prepared to produce adequate sureties with necessary documents to instill the requisite satisfaction in the mind of the learned Magistrate about their solvency. They are prepared to deposit the title deeds before court, it is further submitted. In the peculiar circumstances of this case, where the petitioner has not been able to take advantage of the order granting bail dated 03/11/2006 though he continues in custody from 20/08/2006, I am satisfied that rigid insistence on production of solvency certificate need not be made now and it can be directed that the learned Magistrate must release the petitioner on bail, provided he furnishes sureties with adequate and satisfactory documents to prove their solvency before the learned Magistrate. To the above extent, this petition is allowed and condition No.1 imposed by the learned Magistrate is modified.

(R.BASANT, JUDGE)

jsr

R.BASANT, J

C.R.R.P.No.

ORDER

21ST DAY OF JULY 2006